

Attorney's Docket
99 P 7358 US 01

Patent Application
09/884,415

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REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed May 5, 2003. Claims 13 and 16-33 are pending and stand rejected. Claims 13, 18, 19, 21, 24-26, 31, and 32 have been amended for clarification. Applicants submit that the amendments do not narrow the claims. Applicants respectfully request reconsideration and favorable action in this case.

Section 112 Rejections

The Examiner rejects claims 13, 16-27 and 31-33 under 35 U.S.C. §112, first paragraph. Applicants have amended claims 13, 26, and 31 to recite "when the initial signal quality is higher than a pre-determined signal quality." Applicants have amended claims 19, 21, and 32 to recite "when the initial signal quality is less than a pre-determined signal quality." Applicants respectfully request reconsideration and allowance of these claims and all claims depending therefrom.

Section 103 Rejections

The Examiner rejected Claims 28-30 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,249,683 to Lundby, et al. (hereinafter "*Lundby*") in view of U.S. Patent 5,999,832 to Vannatta, et al. (hereinafter "*Vannatta*"). Applicants respectfully traverse these rejections and all assertions therein.

Claim 28 is patentable for at least two reasons. First, the references, if combined, do not teach each and every limitation of Claim 28. For example, neither *Lundby*, *Vannatta*, nor their proposed combination discloses, teaches, or suggests "summing consecutive line quality indicators over a pre-determined period of time," as recited in independent claim 28. *Vannatta* fails to disclose the summation. *Lundby* merely discloses summing the signal-to-noise ratio of different data strings from multiple sources. Col. 10, Lines 2-8. There is no teaching of summing *consecutive* line quality indicators from a *single* component. Additionally, *Lundby* fails to disclose making the summation over a pre-determined period of time.

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Second, there is no motivation to combine the cited references. Modifying *Lundby* as suggested by the Office Action would make *Lundby* unsatisfactory for its intended purpose. If a "proposed modification would render the prior invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." M.P.E.P. §2143.01. Also, if a "proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." M.P.E.P. §2143.01. Applicants respectfully submit that the modification of *Lundby* by the teachings of *Vannatta*, as suggested by the Office Action, would both "change the principle of operation" of *Lundby* and render *Lundby* "unsatisfactory for its intended purpose." An objective of *Lundby* is to maintain "a desired sum of signal-to-noise ratios expected from the combination of data streams." Col. 10, lines 2-8. In *Lundby*, the signal-to-noise ratios or the frame error rates of different data streams from multiple sources are summed and compared to a desired signal-to-noise ratio. *Id.* Power control commands are then derived and transmitted to maintain the desired signal-to-noise ratio. *Id.*

In contrast, *Vannatta*, as characterized by the Examiner, teaches selecting "the subsequent power level based on signal level and power level of the first signal so as to increase the efficiency and the life of the battery source and operating time of the mobile station." Final Office Action, Page 4 (emphasis added). *Vannatta* teaches a multivariate function whose principal of operation is to enhance the efficiency of a communication device. Fig. 10; Col. 5, lines 53-58. Since enhancing the efficiency depends on at least two variables, the method appears to require deviating from a desired signal-to-noise ratio on occasion. Because enhancing the efficiency of a communication can at times require deviating from a desired signal-to-noise ratio, this limitation, if applied to *Lundby*, would make *Lundby* unsatisfactory for its intended purpose. In addition, requiring *Lundby* to enhance the efficiency of a communication device would "change the principle of operation," which is to maintain a desired signal-to-noise ratio.

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For at least these reasons, claim 28 is not obvious over the asserted combination of *Lundby* and *Vannatta*. As a result, claims 29 and 30, which depend from claim 28, are not obvious over the cited references for at least the same reasons.

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CONCLUSION

For the foregoing reasons and for reasons clearly apparent, Applicants respectfully request allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 19-2179 of Siemens Information & Communications Products, L.L.C.

Date: July 7, 2003

Respectfully requested,

SIEMENS CORPORATION
Intellectual Property Department
170 Wood Avenue South
Iselin, New Jersey 08830
ATTENTION: Elsa Keller, IP Department
Telephone: (732) 321-3026

By: Thomas George
Thomas George
Registration No. 45,740
Attorney for Applicants
Tel: 650-694-5191
Fax: 650-968-4517

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